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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,600	07/16/2003	Keith James Valentyne		6547

7590 01/24/2005  
Keith J. Valentyne  
315 Schindler Drive  
Kimberly, WI 54136

EXAMINER

ARK, DARREN W

ART UNIT PAPER NUMBER

3643

DATE MAILED: 01/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/619,600

Applicant(s)

VALENTYNE, KEITH JAMES

Examiner

Darren W. Ark

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION*****Drawings***

1. Figure 1 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.121(d)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.
2. The drawings are objected to because there are no reference numbers in the Figures to indicate each of the parts of the desired invention. Please refer to the cited prior patents for examples of how this is done. The same numbers to be used in the Figures should also be cited in the specification to assist the reader in easily recognizing and understanding each part discussed. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary,

the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

3. The disclosure is objected to because of the following informalities: the specification is required to include any reference numbers used in the Figures to describe each part of the desired invention.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 2 is rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly

Art Unit: 3643

and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. The claim(s) must be in one sentence form only. Note the format of the claims in the patent(s) cited.

In regard to claim 2, the phrase "which are locked in place over a fishing line by a lever mechanism consisting of two thin hard plastic pieces attached to the bottom of the half spheres" renders the claim vague and indefinite since the fishing line has not been positively set forth as part of the desired invention. The fishing line should be functionally recited as "which are lockable in place over a fishing line...". Also the lever mechanism should be recited as "a lever mechanism consisting of two thin hard plastic pieces attached to adjacent surfaces of the half spheres and extending outwardly therefrom". The half sphere are locked together by the action of the spring, not the lever mechanism, therefore the function of the lever mechanism should be correctly recited in that it is for separating the half spheres which are biased together by the elastic cord, spring, or spring steel tension against the bias of the cord, spring, or spring steel.

In regard to claim 2, the terms "the bottom of the half spheres", "the apex of said sphere", "the flat surface" lack positive antecedent basis since these terms have not been previously recited in claim 2.

In regard to claim 2, the term "the apex of said sphere" renders the claim vague and indefinite since spheres do not have apexes since it does not comprise any straight segments whereas triangles do have 3 apices.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over McCargar et al. 676,724 in view of French Patent No. 586,204 to Charois or French Patent No. 2,371,141 to Svobodny.

McCargar discloses two half spheres (A, B) of a buoyant medium (see pg. 1, lines 15-26, "...may be employed as a sinker and is also adapted for floats...of light material or material suitable for floats..." and "...to form a sinker or float...") which are held together by a loaded spring (C) which are lockable in place over a fishing line (D) by a lever mechanism (formed by A-C) and which flat surfaces are capable of extending outwardly at a 45 degree angle (against action of C-shaped spring C), but does not a lever mechanism disclose the flat surfaces comprising thin hard plastic pieces. Charois and Svobodny disclose a lever mechanism (2 AND 5, 5') extending from line gripping portions (1 AND 4, 4') and that are biased into engagement with the line by a spring (4 AND 3). It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the float of McCargar et al. such that the half spheres have a lever mechanism with two pieces extending therefrom in view of Charois or Svobodny in order to provide means which allow the user to easily separate the half spheres apart

Art Unit: 3643

from each other against the bias of the spring while allowing the assembly to remain fully intact.

McCargar et al. and Charois or Svobodny disclose the two pieces being thin metal, but do not disclose the lever mechanism consisting of two plastic pieces. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the two pieces out of plastic, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice, and because plastic is inexpensive and can be formed readily into the desired shapes, sizes, and configurations. *In re Leshin*, 125 USPQ 416.

### ***Conclusion***

8. In June 2004, the USPTO ceased mailing paper copies of cited U.S. patents and U.S. patent application publications with all Office actions. See "USPTO to Provide Electronic Access to Cited U.S. Patent References with Office Actions and Cease Supplying Paper Copies," 1282 O.G. 109 (May 18, 2004). Foreign patent documents and non-patent literature will continue to be provided to the applicant on paper.

All U.S. patents and U.S. patent application publications are available free of charge from the USPTO web site ([www.uspto.gov/patft/index.html](http://www.uspto.gov/patft/index.html)), for a fee from the Office of Public Records (<http://ebiz1.uspto.gov/oems25p/index.html>), and from commercial sources. Copies are also available at the Patent and Trademark Depository Libraries (PTDLs). A list of the PTDLs may be found on the USPTO web site ([www.uspto.gov/web/offices/ac/ido/ptdl/ptdlib\\_1.html](http://www.uspto.gov/web/offices/ac/ido/ptdl/ptdlib_1.html)). Additionally, a new feature in the Office's Private Patent Application Information Retrieval system (PAIR), E-Patent Reference, is available for downloading and printing of U.S. patents and U.S. patent application publications cited in U.S. Office Actions.

## **STEPS TO USE THE E-PATENT REFERENCE FEATURE**

Art Unit: 3643

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**Instructions for performing the 5 steps:**

**Step 1:** Full instructions for obtaining a PKI digital certificate are available at the Office's Electronic Business Center (EBC) web page ([www.uspto.gov/ebc/downloads.html](http://www.uspto.gov/ebc/downloads.html)). Note that a notarized signature will be required to obtain a digital certificate.

**Step 2:** To get a Customer Number, download and complete the Customer Number Request form, PTO-SB/125, from the USPTO web site ([www.uspto.gov/web/forms/sb0125.pdf](http://www.uspto.gov/web/forms/sb0125.pdf)). The completed form can be transmitted by facsimile to the Patent Electronic Business Center at (703) 308-2840, or mailed to the address on the form. If you are a registered attorney or agent, your registration number must be associated with your customer number. This association is accomplished by adding your registration number to the Customer Number Request form.

**Step 3:** A description of associating a customer number with the correspondence address of an application is described at the EBC Web page ([www.uspto.gov/ebc/registration\\_pair.html](http://www.uspto.gov/ebc/registration_pair.html)).

**Step 4:** The software for electronic filing is available for downloading at [www.uspto.gov/ebc](http://www.uspto.gov/ebc). Users can also contact the EFS Help Desk at (703) 305-3028 and request a copy of the software on compact disc. Users will also need Adobe Acrobat Reader, which is available through a link from the USPTO web site.

**Step 5:** Internet access will be required which applicants may obtain through a supplier of their own choice. As images of large documents must be downloaded, high-speed Internet access is recommended.

The E-Patent Reference feature is accessed using a button on the Private PAIR screen. Ordinarily all of the cited U.S. patent and U.S. patent application publication references will be available over the Internet using the Office's new E-Patent Reference feature. The size of the references to be downloaded will be displayed by E-Patent Reference so the download time can be estimated. Applicants and registered practitioners can select to download all of the references or any combination of cited references. Selected references will be downloaded as complete documents in Portable Document Format (PDF). The downloaded documents can be viewed and printed using commercially available software, such as ADOBE® READER®. ADOBE® READER®



Art Unit: 3643

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([www.adobe.com/products/acrobat/readermain.html](http://www.adobe.com/products/acrobat/readermain.html)).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Ark whose telephone number is (703) 305-3733. The examiner can normally be reached on M-Th, 8:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Darren W. Ark  
Primary Examiner  
Art Unit 3643

DWA